

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

MARK F. MEDEIROS, :
Plaintiff, :
 :
v. : CA 07-425 ML
 :
ROBERT E. JOHNSON, ESQ., :
LAW OFFICES OF HOWARD LEE SCHIFF, :
P.C., and CAPITAL ONE BANK, :
Defendants. :

REPORT AND RECOMMENDATION

David L. Martin, United States Magistrate Judge

Before the Court are two motions to dismiss: (1) Motion to Dismiss by Defendant Capital One Bank (USA), N.A. (Doc. #9); and (2) Motion to Dismiss by Plaintiff Mark F. Medeiros (Doc. #15) (collectively the "Motions to Dismiss"). The Motions to Dismiss have been referred to me for preliminary review, findings, and recommended disposition. See 28 U.S.C. § 636(b)(1)(B). I recommend that the Motions to Dismiss be granted.

Discussion

Both of the Motions to Dismiss seek dismissal of Defendant Capital One Bank (USA), N.A. ("Capital One"), because Capital One is an original debtor, not a debt collector, and, therefore, it cannot be held liable under the Fair Debt Collection Practices Act to Plaintiff Mark F. Medeiros ("Plaintiff"). See Memorandum in Support of Motion to Dismiss by Defendant Capital One Bank (USA), N.A. (Doc. #10) ("Capital One Mem."), at 3;¹ Memorandum in Support of Motion to Dismiss by Plaintiff Mark F. Medeiros ("Plaintiff's Mem.") at 1. It is apparent that Plaintiff and

¹ Capital One additionally argues that Plaintiff's Complaint (Doc. #1) fails to state any claim against Capital One. See Capital One Mem. at 1. The Court need not address this ground for dismissal.

Capital One are in agreement that Capital One should be dismissed from this action, for essentially the same reason. In addition, the Court has granted Plaintiff's Motion for Leave to File Amended Complaint and Add Defendant (Doc. #17), see Order Granting Motion for Leave to File Amended Complaint (Doc. #21), and Plaintiff has since filed his Amended Complaint, see Amended Complaint (Doc. #22). The Amended Complaint does not name Capital One as a Defendant. See id. For these reasons, the Court recommends that the Motions to Dismiss be granted.

Conclusion

I recommend that the Motions to Dismiss be granted. Any objections to this Report and Recommendation must be specific and must be filed with the Clerk of Court within ten (10) days of its receipt. See Fed R. Civ. P. 72(b); D.R.I. LR Cv 72(d). Failure to file specific objections in a timely manner constitutes waiver of the right to review by the district court and of the right to appeal the district court's decision. See United States v. Valencia-Copete, 792 F.2d 4, 6 (1st Cir. 1986); Park Motor Mart, Inc. v. Ford Motor Co., 616 F.2d 603, 605 (1st Cir. 1980).

/s/ David L. Martin
DAVID L. MARTIN
United States Magistrate Judge
June 10, 2008